

#6 Dec/2003

STATE OF MICHIGAN

IN THE SUPREME COURT
APPEAL FROM THE COURT OF APPEALS

CENTRAL CEILING & PARTITION, INC.,
Plaintiff-Appellee,

Supreme Court No. 121009

Court of Appeals No. 225378

v

DEPARTMENT OF COMMERCE,
Defendant-Appellant,

Wayne County Circuit Court
No. 98-810597-CH

and

KITCHEN SUPPLIERS, INC.,
Defendant-Appellee,

and

CAPPY HEATING AND AIR
CONDITIONING, INC.,
Intervening Plaintiff-Appellee,

and

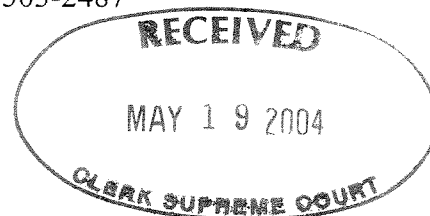
PRIMEAU HOMES, INC.,
Defendant,

and

WAYNE COUNTY REGISTER OF DEEDS,
Defendant.

MICHIGAN LAND TITLE ASSOCIATION'S SECOND SUPPLEMENTAL BRIEF

MICHIGAN LAND TITLE ASSOCIATION
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STATEMENT OF FACTS

The Michigan Land Title Association ("MLTA") is most grateful to this Court for permitting it to participate in this case as Amicus Curiae. The Wayne County Register of Deeds has now responded a second time to questions posed by the Court. MLTA believes the following brief commentary might be helpful.

ARGUMENT

What has become known as "Entry Books" are critical to the functioning of Michigan's real estate recording system. As is evident from the Wayne County Register's response to the Court's questions, there can be no dispute that neither entry books, nor their equivalent, are employed in Wayne County:

1. The TRIMIN system utilized in Wayne County and other Michigan counties, and which has become the focus of much of the parties' attention in this case, is a software package that creates an indexing system and nothing more. It contains only information that has been entered into it by the register of deeds or one of his assistants.

2. The pertinent data is not entered into the TRIMIN system promptly upon receipt of each document. Indeed, references to and information about particular documents are often not entered in the TRIMIN system until they have been in the hands of the register of deeds for several weeks. And, then even that information is not entered sequentially in the order of receipt. First in time may turn out to be second in right!

3. Even critical information, such as the date an instrument was received, is not entered in the TRIMIN system immediately. Again, there may be a delay of up to several weeks.

4. A substantial "gap" period exists in Wayne County--sometimes as long as several months--between the date the Wayne County Register of Deeds receives a document and when a member of the public may ascertain its recordation by searching the real estate records.

5. As noted in the Register's most recent brief in this case, and setting all of the foregoing aside, the TRIMIN system does not record the hour and minute of receipt of an instrument as required by MCL 565.25(1).

6. The TRIMIN system cannot be the functional equivalent of entry books when, as noted in the Register's most recent response, the salient information is not available to the public "until after an instrument has been assigned a Liber Page and indexed." But if a document has been assigned a liber and page and entered in the index, there is no need to look for it in an Entry Book. Entry Books are intended to cover the period after presentation and before indexing. See MCL 565.25. In Wayne County, it appears that there is nothing covering this period.

If Michigan's recording system is to work properly, a member of the public must be able to appear at the office of any register of deeds and perform an accurate title search that will give her or him the full, complete and timely status of title to the real property in which she or he is interested. The systems fails, utterly, if there is a "gap" period in which the register of deeds has received documents for recordation but no one can learn of their existence. This is a title examiner's worst nightmare--a "Catch 22" in which the interested party may be charged with constructive notice, but despite using her or his best efforts, cannot learn of the document's existence. This is the point Justice Cooley made so succinctly in *Sinclair v Slawson*, 44 Mich 123, 6 NW 207 (1980).

CONCLUSION

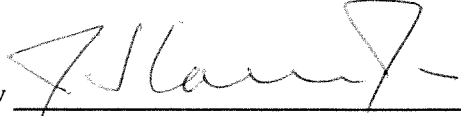
Fairness and common sense, together with all of the reasons set forth in MLTA's previous briefs, require that the Court conclude that the liens at issue in this case were "recorded" upon their presentation to the Wayne County Register of Deeds. On a larger scale, however, it is critical that the Wayne County Register of Deeds and other registers throughout Michigan take immediate steps to remedy their failure to employ Entry Books. If they do not, Michigan courts will in the near future be faced with additional, and yet more complicated, cases involving the recording acts and constructive notice.

Respectfully submitted,

Dated: 5-19-04.

WARNER NORCROSS & JUDD LLP

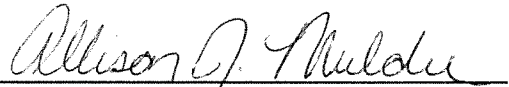
By



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WAYNE COUNTY REGISTER OF DEEDS,
Defendant.

_____ /

CERTIFICATE OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

Kathy Luchs, being first duly sworn, deposes and says that on the 19th day of May, 2004, she caused to be served Michigan Land Title Association's Second Supplemental Brief upon the following:

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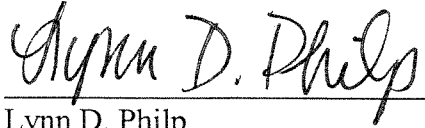
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by enclosing the same in pre-addressed, pre-stamped envelopes and depositing the same in the United States Mail.


Kathy Luchs

Subscribed and sworn to before me
this 19th day of May, 2004.

A handwritten signature in cursive script, reading "Lynn D. Philp", written over a horizontal line.

Lynn D. Philp
Notary Public, Kent County, Michigan
My Commission Expires: 4-10-05

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